

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2689 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SOLI NOSHIR DEVIYARWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2689 of 2001
MR PJ VYAS for Petitioner No. 1
MR SP SEN AGP for Respondent No. 1-3

CORAM : MISS JUSTICE R.M.DOSHIT
Date of decision: 02/07/2001

ORAL JUDGEMENT

Heard the learned advocates.

Rule returnable today. Learned AGP Mr. Sen

appears for and waives service on behalf of the respondents.

The present petition is directed against the communication dated 17th July, 2000 sent by the District Collector, Valsad to the Sarpanch, Gram Panchayat, Sanjan [Annexure 'A' to the petition] and the notice dated 5th December, 2000 issued by the Mamlatdar, Umergaon.

It appears that under the permit dated 2nd January, 1913, one Khan Bahadur Ardeshir Darabji Davierwala was allotted 10 Acres of land in Gurucharan Survey No. 321 for the purpose of raising fruit bearing trees, on the terms and conditions contained therein. The said terms and conditions stipulate, inter alia, that the grantee shall have no right over the said land; that he shall be entitled to the usufruct ie., the fruits and the timber of the trees entirely free; that the Government would have power to remove the trees when necessary, without the claim for any compensation. Since then, the said grantee appears to have raised fruit bearing trees on the said land. The said land continues to be in the possession of the descendant of the said grantee ie., the present petitioner and is being used for the same purpose. On 5th February, 1999, the Sarpanch of Sanjan Gram Panchayat applied for assignment of the said land as a village site. The said application was rejected by the District Collector, Valsad under the impugned communication dated 17th July, 2000. The reason stated was that the said land was given on lease in the year 1913 and the lease having not been renewed, the decedents of the grantee ie., the present petitioner was in unlawful possession of the said land and it was suggested that the proceedings for eviction under section 61 of the Bombay Land Revenue Code may be initiated. The footnote to the said communication suggests that a direction was issued to the Mamlatdar, Umergaon to initiate proceeding against the petitioner for removal of encroachment under section 61 of the Code. Pursuant to the said communication, the impugned notice dated 5th December, 2000 has been issued by the Mamlatdar, Umergaon.

Mr. Vyas has submitted that the whole proceeding has been initiated erroneously inasmuch as the permit was granted to the ancestor of the petitioner on condition of raising fruit bearing trees and the land was not given on lease, as suggested by the Collector under his communication dated 17th July, 2000. The petitioner, therefore, cannot be said to be in unlawful possession of the said land nor can the proceeding for removal of

encroachment under section 61 of the Bombay Land Revenue Code be initiated against the petitioner. Upon perusal of the permit granted to the ancestor of the petitioner, it is evident that the land was given permanently for raising fruit bearing trees without any right over the said land. The grant was not limited for a particular period. In my view, therefore, the grant should subsist so long as the grantee or his descendant continues to use the land for the purpose for which the grant was made. It is indisputable that the petitioner is a descendant of the said grantee and has been using the land for the said purpose ie., for raising the fruit bearing trees. It is not even the case of the respondents-authorities that the petitioner has committed breach of any of the terms of the grant. In my view, therefore, the petitioner is in lawful possession of the land in question and he cannot be said to have encroached upon the said land. The proceeding initiated under section 61 of the Code is wholly misconceived and requires to be quashed and setaside. The petition is accordingly allowed. The impugned notice dated 5th December, 2000 issued by the Mamlatdar, Umergaon is quashed and set-aside. Rule is made absolute. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*